

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 02-0314**  
**Gross Retail & Use Tax**  
**For the Years 1998, 1999, 2000**

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Gross Retail & Use Tax-Purchases of oil for rental cars**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-5-8; 45 IAC 2.2-4-27(4).

Taxpayer protests the tax assessment on oil and oil filter purchases to maintain the operation of vehicles in its rental car business.

**II. Tax Administration-Penalty**

**Authority:** IC § 6-2.5-5-8; IC § 6-8.1-10-2.1; 45 IAC 15-11-2.

Taxpayer protests the assessment of the 10% negligence penalty.

**STATEMENT OF FACTS**

Taxpayer operates short-term automobile rental locations in Indiana and several surrounding states. During the audit period, taxpayer had five Indiana locations. The audit raised a number of issues; the only one taxpayer protested concerns taxpayer's purchases of oil and oil filters used in the regular maintenance of the vehicle fleet. Taxpayer did not pay gross retail tax at the time of purchase. Taxpayer did not self-assess and remit use tax on these purchases. Therefore, the auditor made those adjustments to taxpayer's tax liability. Taxpayer's protest is a purely legal argument based on differing interpretations of the applicable Indiana statutes and regulations. Taxpayer also protests the assessment of the 10% negligence penalty. Further facts will be added as required.

**I. Gross Retail & Use Tax-Purchases of oil for rental cars**

## **DISCUSSION**

Taxpayer protests the assessment of use tax on its purchases of oil and oil filters. Taxpayer did not pay Indiana gross retail tax on the items of tangible personal property at the time of purchase. In its protest letter and written brief submitted as its hearing on the protest, taxpayer argued that oil changes are necessary for the proper maintenance of the cars that are rented out and are therefore not subject to tax. Taxpayer also argued that there is no basis in Indiana's statutes and regulations to tax oil and oil filters used in maintaining cars in businesses that rent out those cars to customers.

IC § 6-2.5-2-1 provides in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2 and IC § 6-2.5-3-4 impose the use tax on items of tangible personal property if the gross retail tax was not paid at the time of purchase. Therefore, pursuant to IC § 6-2.5-3-6, taxpayer is liable for payment of use tax on the oil and oil filters purchased to change the oil on a regular basis for the proper maintenance of the vehicles in the rental fleet. These statutes and their governing regulations provide ample support for taxing these items of tangible personal property. There are no exemptions in the statutes or regulations that would relieve taxpayer of the duty either to pay the gross retail tax at the time of purchase, or to self-assess and remit the use tax.

Taxpayer argues that these items are necessary to maintain the proper operation of the rental vehicles; otherwise, they would be inoperable. Taxpayer also argues that inasmuch as IC § 6-2.5-8 does not require tax on the purchase of the cars for rental, the maintenance oil and filters should be exempt as well. On the surface, taxpayer's argument is attractive; however, 45 IAC 2.2-4-27(4) clearly states:

Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

Therefore, when taxpayer purchases oil and oil filters to change the oil in its vehicles, taxpayer consumes these supplies and must either pay gross retail tax on them at the time of purchase or self-assess use tax and remit it to the Indiana Department of Revenue.

## **FINDING**

Taxpayer's protest concerning the assessment of use tax on the purchase and consumption of oil and oil filters, used in regular oil changes for its fleet of rental vehicles, is denied.

### **II. Tax Administration-Penalty**

Taxpayer protests the imposition of the 10% negligence penalty on the entire assessment. Taxpayer argues that it had reasonable cause for failing to pay the appropriate amount of tax due. Taxpayer stated in its brief that there was no intent to defraud the state, and that its failure to pay the proper amount of tax was due to its interpretation of Indiana's statutes and regulations, specifically IC § 6-2.5-5-8:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the forms of the property.

The above exemption applies to businesses acting in their capacity as retail merchants; when taxpayer purchases the oil and oil filters, taxpayer is not acting as a retail merchant because the business uses the oil and oil filters. If taxpayer was in the business of changing oil, then perhaps the exemption would apply. But taxpayer does not change oil as its principal business; it rents and leases cars.

Indiana Code Section 6-8.1-10-2.1(d) states that if a taxpayer subject to the negligence penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit taxes held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty. Indiana Administrative Code, Title 45, Rule 15, section 11-2 defines negligence as the failure to use reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence results from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by Indiana's tax statutes and administrative regulations.

In order for the Department to waive the negligence penalty, taxpayer must prove that its failure to pay the full amount of tax due was due to reasonable cause. Taxpayer may establish reasonable cause by "demonstrat[ing] that it exercised ordinary business care and prudence in carrying or failing to carry out a duty giving rise to the penalty imposed. . . ." In determining whether reasonable cause existed, the Department may consider the nature of the tax involved, previous judicial precedents, previous department instructions, and previous audits.

Taxpayer set forth a basis whereby the Department could conclude taxpayer exercised the degree of care statutorily imposed upon an ordinarily reasonable taxpayer. Taxpayer's interpretation of the relevant Indiana statutes and regulations, while incorrect, is not so far-fetched as to render the interpretation careless, thoughtless, or unreasonable. Further, taxpayer did self-assess the use tax at issue, but misunderstood which state was to receive the tax that was self-assessed. The state that did receive it should have recognized the error and corrected it. Plus, a prior income audit

resulted in a refund. Therefore, given the totality of all the circumstances, waiver of the penalty on the entire assessment is appropriate in this particular instance.

**FINDING**

Taxpayer's protest concerning the proposed assessment of the 10% negligence penalty is sustained.

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